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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

**UNITED STATES' MOTION IN
LIMINE REGARDING
DEFENDANT'S EXPERTS
ROBERT "JAKE" JACOBSEN
AND HANS IWAND**

UNION PACIFIC RAILROAD COMPANY,

Third-Party Plaintiff

vs.

PANDROL JACKSON and HARSCO COMPANY

Third-Party Defendants

Civil No. 2:05CV00545 TC

Magistrate Judge Brooke C. Wells

_____Pursuant to the Trial Order (Docket # 87), entered January 31, 2008, all motions in limine are due 5 days prior to trial. That deadline is today under Fed. R. Civ. P. 6, as trial is set to start on Tuesday, February 19, 2008, following the Monday holiday for Presidents' Day.

Accordingly, under Fed. R. Civ. P. 37(c)(1), the United States moves to limit the evidence of Defendant Union Pacific Railroad Company's expert Robert "Jake" Jacobsen, for the following reasons:

1. Mr. Jacobsen was deposed on January 31, 2008.
2. Mr. Jacobsen and UPRR then represented for the first time that Mr. Jacobsen had taken 100 or so photographs of the fire scene to support his opinion about the fire cause and origin.
3. Mr. Jacobsen and UPRR also then represented that those photographs were no longer available, and that Mr. Jacobsen was going to return to the scene subsequent to the deposition to take more photographs.
4. The United States subsequently has requested from UPRR when Mr. Jacobsen would be available for deposition with those new photographs, but there has been no response.
5. Pursuant to the Scheduling Conference Order, as amended, Mr. Jacobsen's expert disclosure report under Fed. R. Civ. P. 26(a)(2) was due July 6, 2007. It was then delivered, but it did not include the "missing photographs," nor, obviously, could it have included any photographs Mr. Jacobsen may have taken after his deposition on January 31, 2008.

The United States requests, therefore, the Court enter a motion in limine prohibiting the

introduction of any photographs on which Mr. Jacobsen relies that were not tendered at his deposition, and any testimony by Mr. Jacobsen in support of his opinion that is based upon information he learned subsequent to his deposition that was not disclosed to the United States.

Similarly, and also under Fed. R. Civ. P. 37(c)(1), the United States moves to exclude any evidence or testimony from a newly-mentioned supposed expert on metallurgy named Hans Iwand, for the following reasons:

1. Today at 1:46 p.m., defendant emailed a report by Mr. Iwand, expecting the United States to take Mr. Iwand's deposition in less than 24 hours.

2. Mr. Iwand has never been formally designated by UPRR as an expert it would offer. His name was only informally mentioned by UPRR's counsel at some recent depositions in January, 2008.

Respectfully submitted,

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/s/ Eric A. Overby
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CERTIFICATE OF SERVICE

The foregoing document was served by ECF to the following on the 11th day of February, 2008:

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